

## **SCHEDULE 19 – FAXPOST SERVICE TERMS AND CONDITIONS**

### **1 Introduction**

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- 1.1 These special service terms and conditions are supplementary to the Australia Post Terms and Conditions and to the extent that any aspect of this special service is not expressly included herein, the Australia Post Terms and Conditions apply.
- 1.2 These special service terms and conditions apply when:
  - 1.2.1 a customer makes a written application to use the special service in or on a form prescribed by Australia Post for that purpose;
  - 1.2.2 Australia Post accepts that application; and
  - 1.2.3 the customer pays the fee, charge, premium, rate or price charged by Australia Post for the special service.

### **2 Interpretation**

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- 2.1 Except as where expressly defined, all words and phrases used in this Agreement shall have the same meaning if any, given to them in the *Australian Postal Corporation Act 1989* and in the Australia Post Terms and Conditions provided, however, that where there is any inconsistency, the meaning shall be as defined in this Agreement to the extent of that inconsistency.
- 2.2 In these terms and conditions unless the contrary intention appears:
  - 2.2.1 where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have a corresponding meaning;
  - 2.2.2 words importing a gender include any other gender; and
  - 2.2.3 words in the singular number include the plural and words in the plural number include the singular.
- 2.3 "**agreement**" means an agreement between Australia Post and a customer pursuant to clause 1.2.
- 2.4 "**Facsimile document**" means a facsimile reproduction of an original document.
- 2.5 "**Fax Centre**" means an office or other place which has been designated by Australia Post as a Fax Centre.
- 2.6 "**Original document**" means a document lodged at or collected and conveyed to a Fax Centre for facsimile carriage or delivery from that centre.
- 2.7 "**Sender**" means a person by whom or on whose behalf an original document is lodged for carriage by the FaxPost service.
- 2.8 "**Service**" means the FaxPost Service which is a special service for the facsimile transmission by the public of documents using the facilities provided by Australia Post.
- 2.9 "**Transmittal sheet**" means a document which the sender is required by Australia Post to complete prior to carriage of an original document.

### **3 Applications to use the service**

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- 3.1 A person may apply to Australia Post for a service which involves the lodgment by hand of an original document at an office for facsimile carriage or for facsimile carriage and delivery;
- 3.2 Subject to clause 3.3, overseas services involving the facsimile carriage of an original document between Australia and a place outside Australia shall be available in accordance with the provisions of this Agreement and the terms and conditions of particular arrangements between Australia Post and individual postal administrations or individual persons or bodies.
- 3.3 Where a provision under this Agreement or a term or condition under this clause is inconsistent with any applicable international convention, the convention shall prevail over the former to the extent of the inconsistency.
- 3.4 An original document that is lodged or collected under this clause shall be accompanied by a completed transmittal sheet.

### **4 Ineligible original documents**

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- 4.1 An original document may be refused facsimile carriage under this Agreement:
  - 4.1.1 where it comes to the attention of Australia Post that the document might be used to menace or harass another person or could be regarded by a reasonable person as being offensive or defamatory;
  - 4.1.2 because in the opinion of Australia Post, the document, because of its physical characteristics, is not or may not be capable of carriage or satisfactory reproduction if carried. Carriage of such a document may be undertaken only at the sender's risk and upon the sender's consent being endorsed to that effect upon the transmittal sheet.

### **5 Carriage and delivery**

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- 5.1 An original document lodged under this Agreement may be carried by facsimile –
  - 5.1.1 to a fax centre for delivery at or from that centre –
    - (i) by hand to the addressee or a person authorised in writing to receive the document at that centre; or
    - (ii) by ordinary post, or
    - (iii) in accordance with instructions given by the sender prior to lodgement of the document; or
  - 5.1.2 direct to the addressee where the facsimile telephone number for the addressee has been supplied by the sender.
- 5.2 An original document may be treated as undeliverable to its addressee when at least two attempts at facsimile carriage have been unsuccessful.
- 5.3 Where a facsimile document cannot be delivered pursuant to clause 5.1, Australia Post shall take reasonable steps to obtain a further delivery instruction from the sender.
- 5.4 Where a further instruction under clause 5.3 is obtained, compliance with it may be deemed to be a further carriage from the Fax Centre where the document was held to the place of delivery of the document.

## **6 Disposal of original document**

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- 6.1 An original document in respect of which facsimile carriage and delivery has been provided shall be returned to the sender at his request upon payment by the sender of any costs incurred by reason of its return.
- 6.2 Original documents not requested to be returned to sender under clause 6.1 shall be retained at a Fax Centre for a period of seven days, after which period such documents will be destroyed.

## **7 Charges**

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- 7.1 The charges for the carriage and delivery of a document by the FaxPost service shall be calculated in accordance with the rates determined by Australia Post.

## **8 Payment**

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- 8.1 The charges payable under this Agreement shall be payable in money at the time of lodgment of a FaxPost document.

## **9 Limitation of Liability Release and Indemnity**

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- 9.1 Subject to clause 9.2 and Australia Post Terms and Conditions, Australia Post shall not be liable to any person (whether in contract, tort or otherwise) for any loss or damage suffered, or that may be suffered, in relation to the provision of the service, or any other matter or thing relating to this Agreement.
- 9.2 To the extent permitted by law, Australia Post expressly disclaims all conditions and warranties, express or implied, in respect of the service and the carriage of letters pursuant to this Agreement. Where the law precludes such exclusion and implies certain conditions and warranties into this Agreement, the liability of Australia Post for breach of such condition or warranty shall be limited, if legally permissible, to:
  - 9.2.1 supplying the service again; or
  - 9.2.2 payment of the cost of having the service supplied again.
- 9.3 To the extent permitted by law, the customer releases and indemnifies Australia Post, its employees or agents in relation to –
  - 9.3.1 any defamation (whether civil or criminal), or infringement of copyright; or
  - 9.3.2 any loss or damage suffered, or that may be suffered, by a person in relation to the lodgment, collection, carriage or delivery of an original document by the FaxPost service.

## **10 Force Majeure**

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- 10.1 Australia Post shall not be in default under the terms of this Agreement nor liable for failure to observe or perform in accordance with any provision of this Agreement for any reason or cause which could not with reasonable diligence be controlled or prevented by it, including without limitation, war, insurrection, riot, civil commotion, strikes, lock-outs, labour or industrial disputes, acts of God, acts of Governments or

flood, storm, tempest, power shortages or power failure, inability to obtain sufficient labour, raw materials, fuel or utilities. During the period of an incident or incidents of "Force Majeure" this Agreement shall be suspended and delivery will recommence after the incident or incidents of "Force Majeure" end.

## **11 Merger**

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- 11.1 All the rights, immunities and limitations of liability in this Agreement shall continue to have their full force and effect in all circumstances notwithstanding any breach of contract or of any conditions hereof by Australia Post.

## **12 Law**

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- 12.1 This Agreement is governed by, and shall be construed in accordance with the laws in force in the State of Victoria and the courts and registries of courts in that State shall have jurisdiction in the event of a dispute.

## **13 Whole of agreement**

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- 13.1 Subject to clause 1.1 this Agreement contains the whole of the agreement between the parties in relation to the special service and any representation or warranty made by either party prior to entering into this Agreement shall have no force or effect unless otherwise stated herein.